

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CEVIN SOLING

Plaintiff

-against-

ANTHONY M. GABRIELE,
JOHN GABRIELE and
CARZOOM.COM, LLC

Defendants

INDEX NO.

COMPLAINT

Plaintiff Cevin Soling, by his attorneys, alleges as follows:

1. Plaintiff Cevin Soling is an individual and resident of the Commonwealth of Massachusetts.
2. Defendant Anthony M. Gabriele is an individual and resident of the State of New York.
3. Defendant John Gabriele is an individual and resident of the State of New York.
4. Defendant Carzoom.com, LLC is a Florida limited liability company which principally transacts business in the State of New York.
5. The Court has jurisdiction over the claims in this case pursuant to 28 U.S.C. §1332 as there is diversity of citizenship between the parties and the amount in controversy exceeds \$75,000 exclusive of costs and interest.
6. Defendant Carzoom.com, LLC was, at all times relevant to this action, in the business of developing and promoting online search engines to address the specialized market of automobiles and potentially also marine vehicles.

7. Defendant Anthony M. Gabriele was, at all times relevant to this action, the controlling owner and managing member of Defendant Carzoom.com, LLC.

8. On or about May 21, 2008, Plaintiff and Defendants entered into an agreement (the "Agreement") which provided in pertinent part that Plaintiff would invest one hundred thousand dollars (\$100,000) in Defendant Carzoom.com, LLC in order to fund the development of:

- A. A CarZoom.com national marketing plan;
- B. proprietary search engine software programming permitting multiple vertical "spider" internet searches for automobiles and other vehicles (referred to below as the "Search Engines"; and
- C. development and execution of marketing plans for the national promotion of the Search Engines.

9. Plaintiff provided the aforementioned investment for the aforementioned purposes.

10. The Agreement provided in pertinent part that Defendants, jointly and severally, would:

- A. Apply Plaintiff's investment for the aforementioned purposes in a prudent and businesslike manner; and
- B. Maintain complete and accurate records and books of account and make such records and books of account available for inspection and audit by Plaintiff; and
- C. Be liable for their willful or fraudulent misconduct in the performance of their obligations, or for gross negligence or willful breach of their fiduciary duties.

11. Defendants breached the Agreement by:

- A. Failing to apply Plaintiff's investment to the stated purposes through willful and fraudulent misconduct; and
- B. Misappropriating and permitting the misappropriation of Plaintiff's investment and other company funds for the personal benefit of Defendant Anthony M. Gabriele; and
- C. Refusing to provide Plaintiff with meaningful access to company books and records; and
- D. Refusing to provide Plaintiff with any meaningful accounting of the company's business.

**COUNT ONE – BREACH OF CONTRACT
BY DEFENDANTS**

- 12. Plaintiff repeats and realleges paragraphs 1 through 11.
- 13. Plaintiff has been damaged as a proximate cause of Defendants' breach of the Agreement in an amount to be determined but at least \$100,000.
- 14. Defendants are liable for punitive damages in an amount to be determined but at least \$200,000 due to their willful and fraudulent misconduct.

**COUNT TWO – BREACH OF FIDUCIARY DUTY
BY DEFENDANT ANTHONY M. GABRIELE**

- 15. Plaintiff repeats and realleges paragraphs 1 through 11.
- 16. Defendant Anthony M. Gabriele owes a duty of loyalty and a duty of care to Plaintiff pursuant to Florida Statutes Anno. §608.4225(1).
- 17. Plaintiff has been damaged as a proximate cause of the breach of those duties by Defendant Anthony M. Gabriele in an amount to be determined but at least \$100,000.
- 18. Defendant Anthony M. Gabriele is liable for punitive damages in an amount to be determined but at least \$200,000 due to his willful and fraudulent misconduct.

WHEREFORE Plaintiff Cevin Soling respectfully requests the entry of judgment in his favor against Defendants Anthony M. Gabriele and Carzoom.com, LLC, jointly and severally, in an amount to be determined but at least \$100,000 for actual damages and \$200,000 for punitive damages.

Dated: February 19, 2013

/s/ James MacNaughton _____
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